

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Applications of)	Fee Control Nos. 9901088210298001 &
Lockheed Martin Corporation)	9905288210337001
and Lockheed Martin Global)	
Telecommunications, Inc.)	

MEMORANDUM OPINION AND ORDER

Adopted: June 13, 2001; Released: June 21, 2001

By the Commission:

I. INTRODUCTION

1. The Commission has before it two Applications for Review, one filed by Lockheed Martin Corporation (Lockheed Martin) and the other filed by Lockheed Martin Global Telecommunications, Inc. (LMGT) on behalf of LMGT Astro License, LLC (LMGT Astro) (collectively, Lockheed), on December 27, 2000. Lockheed seeks review of decisions of the Office of Managing Director denying Requests for Partial Waiver and Refund of Fees filed by Lockheed.¹ The Applications for Review involve similar situations and issues; therefore we will address them together.² For the reasons discussed below we deny the Applications for Review.

II. BACKGROUND

2. Lockheed Martin applied for and received authority to assign its authorizations to launch and operate nine Ka-Band Astrolink System geostationary satellites (Astrolink System) to LMGT Astro, an indirect wholly owned subsidiary of Lockheed Martin.³ LMGT Astro then

¹ See letters dated October 18, 2000, from Mark A. Reger, Chief Financial Officer, to Raymond G. Bender, Esq.

² The Applications for Review present virtually identical arguments; the one difference is that the Lockheed Martin Application for Review presents an additional argument regarding the pro forma nature of its assignment to LMGT Astro.

³ See File No. SAT-ASG-1990107-00008 (granted Feb. 25, 1999).

applied for and received authority to assign its authorization to launch and operate the Astrolink System satellites to Astrolink International, LLC (Astrolink).⁴ Lockheed also filed requests that the Commission partially waive and reduce the related application fees set forth in section 8 of the Communications Act of 1934, as amended, 47 U.S.C. § 158. Section 8 provides that the application fee for assignment for geostationary space stations is to be calculated per satellite.⁵ The fees associated with an application to assign the Astrolink System were thus \$57,510.00, or \$6,390.00 per satellite.⁶ Lockheed asked that the Commission reduce the application fees in these matters to \$8,810.00 each, which would correspond to the application fee under section 8 for an assignment of authorization for a low-earth orbit (or non-geostationary) satellite system.⁷ Lockheed argued in the alternative that the Commission should calculate the application fees on a per orbit basis rather than per satellite as specified in the statute.⁸ Because the Astrolink System is authorized to use five orbital slots for nine satellites, per orbit calculation would have reduced the instant application fees to \$31,950.00 each.

3. The Office of Managing Director, by the Chief Financial Officer, denied Lockheed's requests. The Chief Financial Officer found that Lockheed had not demonstrated that the public interest required for waiver and reduction of the fees established by Congress.⁹

III. DISCUSSION

4. In the Applications for Review, Lockheed argues that the Office of Managing Director erred in not reducing the application fees in these matters.¹⁰ For the reasons below, we deny the Applications for Review.

5. Lockheed first argues that statutory application fees must be compensatory in nature and bear a relationship to the expenses the Commission expects to incur in processing the instant application.¹¹ Lockheed states that the fee in this instance far exceeds the costs the Commission

⁴ See *Application of LMGT Astro Licensee, Assignor and Astrolink International, LLC, Assignee*, 15 FCC Rcd 21777 (1999).

⁵ 47 U.S.C. § 158(g)(Common Carrier Services)(16.c).

⁶ In section 8, Congress provided that the Commission is to adjust the schedule of application fees every two years to reflect changes in the Consumer Price Index. 47 U.S.C. § 158 (b)(1). The Commission has done so, resulting in the increase of fees from the statutory schedule to the fee of \$57,510.00 at the time of the application at issue. 47 C.F.R. § 1.1107(9)(b) (1999).

⁷ Lockheed Martin Request for Partial Waiver and Refund of Fees (Lockheed Martin Request) at 1; LMGT Request for Partial Waiver and Refund of Fees (LMGT Request) at 1.

⁸ Lockheed Martin Request at 4; LMGT Request at 3-4.

⁹ See letters dated October 18, 2000, from Mark A. Reger, Chief Financial Officer, to Raymond G. Bender, Esq.

¹⁰ Lockheed Martin Application for Review at 6; LMGT application for Review at 6-8.

¹¹ In the Applications for Review, Lockheed cites *Nat'l Cable Television Ass'n v. FCC*, 554 F.2d 1094 (D.C. Cir. 1976), for the proposition that a "fee" is a payment for a privilege or service rendered and cannot exceed the value of such services. LMGT Application for Review at 6-7; Lockheed Martin Application for Review at 7. That case,

could incur in processing its applications; Lockheed Martin argues that this is particularly true since its application involved a pro forma transfer. We have stated, however, that there is “no justification in the statute or legislative history for apportioning fees according to the actual work done on any particular application.”¹² We also have noted that “processing costs were but one factor in the rough calculus that resulted in the legislated fees.”¹³ Further, in implementing section 8, we stated that “[i]t is not our intention to make individualized determinations of the ‘appropriate fee.’ Rather, except in unusual cases in which the public interest requires otherwise, we will levy the fee as determined by Congress.”¹⁴ In addition, unlike in some of the services in the statutory fee schedule, Congress did not elect to assess lower fees for pro forma transfers of geostationary satellites.¹⁵ Rather, it assessed the same fee for all assignments and transfers of these satellite licenses.¹⁶ Therefore, we shall not use our waiver authority either to make individualized determinations of costs or generally to lower fees in circumstances where Congress has chosen not to do so.

6. Lockheed also argues that the Office of Managing Director should have addressed in the waiver process the disparity between the higher fees Congress set for assignment of geostationary satellite systems and the lower fees for assignments of non-geostationary satellite systems.¹⁷ For example, Lockheed Martin argues that it should not have to pay fees of \$57,510.00 to accomplish an internal restructuring, when an applicant in the non-geostationary satellite system service would pay only \$8,810.00 for an assignment involving a third party.¹⁸ Lockheed further argues that reducing the instant geostationary satellite application fees would preserve and promote competition among all providers of satellite communications services.¹⁹

7. Lockheed’s arguments do not justify a waiver. Congress set the application fee for assignment of non-geostationary satellite systems per request, rather than per satellite.²⁰ Thus,

however, specifically dealt with a fee assessed by the agency under the Independent Office Assessment Act (IOAA) (now codified at 31 U.S.C. § 9701). 554 F.2d at 1096. The Supreme Court had held that the statutory language and intent of Congress in the IOAA was to require agencies assessing fees under the IOAA to base such fees on the value to recipients, and the Court of Appeals for the District of Columbia Circuit thus analyzed the IOAA fees at issue under that standard. 554 F.2d at 1097. The fees at issue in the instant matters, however, were not established under the IOAA, but rather are fees specifically set by Congress.

¹² *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 949 (1987).

¹³ *Id.*

¹⁴ *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 3 FCC Rcd 5987 (1988).

¹⁵ *See, e.g.*, 47 U.S.C. § 158(g)(Mass Media Services)(1.e).

¹⁶ *Id.*, § 158(g)(Common Carrier Services)(16.c).

¹⁷ Lockheed Martin Application for Review at 6-8; LMGT Application for Review at 6-8.

¹⁸ Lockheed Martin Application for review at 5; LMGT Application for Review at 5.

¹⁹ Lockheed Martin Application for review at 10; LMGT Application for Review at 9.

²⁰ 47 U.S.C. § 158(g)(22)(c).

the fee for assignment of non-geostationary satellite systems is not multiplied by the number of satellites in the system, as is statutorily required for geostationary systems, and is correspondingly lower. Lockheed's concerns about any disparity in fees for geostationary and non-geostationary satellites thus reflect its general disagreement with the statutory fee schedule. Our waiver authority, however, is not intended to correct for perceived inequalities in the statute itself, but for good cause shown in individual situations.

8. Lockheed argues in the alternative that the Office of Managing Director should have calculated the instant application fees on a per orbit basis, rather than on a per satellite basis as provided in the statute.²¹ In this regard, Lockheed states that the Commission should follow the framework of the Managing Director's prior decisions permitting waiver and reduction of fees for authority to launch and operate geostationary satellites based on the number of orbital slots rather than the number of satellites.²² Lockheed states "there is no apparent reason" not to apply the same reduction calculation in the assignment context.²³

9. The cited decisions of the Managing Director are inapposite. These decisions were based on a conclusion that the change in the satellite technology at issue had not been anticipated when Congress established the fees in section 8 for satellite launch and operation authority. In contrast, Congress was clearly aware that licensees of geostationary satellites might assign multiple satellites, as would licensees of non-geostationary satellite systems. Nevertheless, Congress specified that licensees in Lockheed's position would pay assignment application fees per satellite and licensees of non-geostationary satellite systems would pay assignment application fees per request. Therefore, as discussed above, because there are no special circumstances here justifying a waiver, we shall not use our waiver authority to lower fees in circumstances where Congress has chosen not to do so.

10. Finally, Lockheed further argues that to reduce the fee by calculating it on a per orbit basis would reduce the Congressionally mandated fees to "a more realistic amount."²⁴ In this,

²¹ Lockheed Martin Application for Review at 12-14; LMGT Application for review at 10-12.

²² In September 1995, the Managing Director established an interim filing fee payment for applicants for authority to launch and operate Ka-Band satellites. Federal Communications Commission, Public Notice 56031, Interim Filing Fee Payment Established for Ka-Band Satellite Applications (Sept. 28, 1995). Based on the evolution of satellite technology and the multiple satellite systems planned for deployment, the Managing Director tentatively concluded that the per satellite authorization fee may not be suitable for this service. *Id.* The Managing Director instructed applicants to file fees for applications for authorization to launch and operate based on the number of orbital locations the system would occupy, rather than on the number of satellites they plan to deploy. *Id.* As Lockheed notes, the Office of Managing Director since has waived and reduced filing fees for applications for authority to launch and operate on a similar basis, permitting fees to be calculated on a per orbit basis if the applicant is requesting authority to launch and operate technically identical satellites. See letter of June 22, 2000, from Mark A. Reger, Chief Financial Officer, Federal Communications Commission, to Stephen D. Baruch, Esq.

²³ Lockheed Martin Application for review at 15; LMGT Application for Review at 13.

²⁴ Lockheed Martin Application for review at 16; LMGT Application for Review at 14.

Lockheed essentially is reiterating the argument, which we have rejected, that the Commission should not collect the statutory application fees in this matter because the applicant does not believe they represent the costs the Commission will incur in processing the individual application. After careful review of the issues raised in the Application for Review, we therefore do not find any basis for modifying the decision of the Office of Managing Director denying Lockheed's Request for Partial Waiver and Refund of Fees.

IV. ORDERING CLAUSES

ACCORDINGLY, IT IS ORDERED that the Applications for Review, filed on December 27, 2000, by Lockheed Martin Corporation and Lockheed Martin Global Telecommunications, Inc. ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
LOCKHEED MARTIN CORPORATION)	
)	
Request for Partial Waiver and)	Fee Control No. 9901088210298001
Refund of Fees In re Application of)	
Lockheed Martin Corporation For)	
Authority for a <i>Pro Forma</i> Assignment of)	
the Astrolink System Authorization)	
)	

To: The Managing Director

APPLICATION FOR REVIEW

Lockheed Martin Corporation ("Lockheed Martin"), by its attorneys, and pursuant to Section 1.115 of the Commission's rules, hereby requests review of an action of the Office of Managing Director ("Managing Director") denying Lockheed Martin's request for partial waiver and refund of fees. In support whereof, the following is respectfully shown:

I. Background

By this Application for Review, Lockheed Martin urges the Commission to reverse a decision of the Managing Director that denied a partial waiver and refund of an FCC filing fee paid in connection with an application to assign the Astrolink System space station authorization from Lockheed Martin to LMGT Astro License, LLC ("LMGT Astro"), an indirect wholly-

owned subsidiary of Lockheed Martin.¹ For reasons discussed below, Lockheed Martin respectfully submits that the decision of the Managing Director conflicts with established FCC policy concerning satellite fee payments and is otherwise unsound.

A. The Request for Partial Waiver and Refund of Fees

On January 7, 1999, Lockheed Martin filed an application on FCC Form 312 seeking Commission consent for a *pro forma* assignment of the Astrolink System authorization from Lockheed Martin to LMGT Astro.² The Astrolink System is a global Ka-band satellite network comprised of nine identical geostationary satellite orbit ("GSO") satellites that will be located in a total of five orbital slots. Two Astrolink satellites will be co-located in each of four orbital locations, and a single Astrolink satellite will be located in the fifth orbital location.

Accompanying the assignment application was an FCC Form 159 and a check payable to the FCC in the amount of \$57,510 to cover the fee specified in Section 1.1107(9)(b) of the rules.³ This payment was based on a \$6,390 fee for assignment of each of the nine GSO satellites in the Astrolink System, resulting in an aggregate filing fee of \$57,510. Although Lockheed Martin tendered this total amount in accordance with FCC requirements, it requested a partial waiver and refund of a portion of the fee ("Waiver Request") based on two alternative grounds.

First, the Waiver Request asked the Managing Director to reduce the fee to \$8,810, which is the applicable FCC filing fee for assignment of a non-geostationary satellite orbit ("NGSO")

¹ See Letter to Raymond G. Bender, Jr., counsel to Lockheed Martin, from Mark A. Reger, Chief Financial Officer, Office of the Managing Director, October 18, 2000, ("Managing Director's Decision"), a copy of which is appended hereto as Attachment 1.

² See Application of Lockheed Martin Corporation, Assignor, and LMGT Astro License, LLC, Assignee, for *pro forma* assignment of the Astrolink System Authorization, File No. SAT-ASG-19990107-00008), filed January 7, 1999.

³ 47 CFR § 1.1107(9)(b) (1999).

system license. Calculating the fee on this basis would result in a concomitant refund of \$48,700.⁴ In the alternative, the Waiver Request maintained that the fee to assign Astrolink's system of identical GSO satellites should be calculated on a *per orbit location* basis rather than a *per satellite* basis. Using this method would result in a filing fee of \$31,950, and a refund of \$25,560.⁵

In support of these requests, Lockheed Martin noted that FCC filing fees should bear a reasonable relationship to the expenses the Commission would be expected to incur in processing an application.⁶ With respect to the relative fees for GSO and NGSO systems, Lockheed Martin observed that, in the context of assignment of license applications, the rules impose disproportionately large fees on GSO operators as compared to NGSO operators.⁷ Lockheed Martin noted it could not discern any rational reason why an assignment application for a system of technically identical GSO satellites would require a fee of \$6,390 *per satellite*—which, in the case of the Astrolink System, would require a total fee of \$57,510—while the same assignment application for a system of technically identical NGSO satellites would require a fee of only \$8,810, regardless of the number of satellites in the NGSO system.⁸ The Waiver Request observed that the Telecommunications Act of 1996 sought to prevent discrimination among providers of similar telecommunications services, and that the Commission itself had

⁴ The \$57,510 amount paid less an \$8,810 filing fee would result in a refund of \$48,700.

⁵ The \$57,510 amount paid less a \$31,950 filing fee would result in a refund of \$25,560.

⁶ Waiver Request at 2-3.

⁷ *Id.* at 3.

⁸ *Id.*

encouraged similar regulatory treatment for similar services that compete against each other.⁹

Thus, Lockheed Martin urged the Managing Director to authorize a fee adjustment in this case “[i]n order to treat GSO and NGSO system operators equitably, and to preserve and promote competition among all providers of satellite communications services.”¹⁰

With respect to the alternative basis for relief, *i.e.*, calculating the applicable fee on a *per orbit location* rather than a *per satellite* basis, Lockheed Martin maintains that processing an assignment application that involves two identical satellites in the same orbit location is no more costly than processing an application where there is only one satellite at such orbit location.¹¹

The Waiver Request cited (and appended) an interim FCC decision governing initial applications for authority to launch and operate Ka-band satellite systems, where the Commission authorized fee payments based on the number of orbital locations applied for, regardless of how many satellites are proposed at each location.¹² In the *Ka-Band Fee Decision*, the Managing Director adopted a flexible reading of the fee schedule “because of the evolution in geostationary satellite technology and the multiple geostationary space stations that Ka-band applicants are anticipated to deploy in their systems.”¹³

3 The Waiver Request also noted that the Astrolink assignment of license application involved a *pro forma* transaction, *i.e.*, Lockheed Martin was proposing only to assign the

⁹ *Id.* Proposed Ka-band satellite systems employing each type of system architecture, *i.e.*, GSO satellite systems like Astrolink and NGSO satellite systems like Teledesic, will provide broadband and other Ka-band services and will compete against each other in the market.

¹⁰ Waiver Request at 3-4.

¹¹ *Id.* at 4.

¹² *Id.* at 4 and Appendix 4 (FCC Public Notice 56031), *Interim Filing Fee Payment Established for Ka-Band Satellite Applications* (September 28, 1995) (the “*Ka-Band Fee Decision*”).

¹³ Waiver Request at 4 n. 6, quoting *Ka-Band Fee Decision*.

Astrolink System authorization to a wholly-owned subsidiary of Lockheed Martin. A \$57,510 filing fee for FCC consent to implement an internal corporate restructuring appears excessive, especially since no third parties were involved in the application and Lockheed Martin's qualifications are well known to the FCC. The Waiver Request suggested that *pro forma* assignment applications involve significantly lower processing costs than third-party assignment applications, and observed that FCC filing fees in other services distinguish between *pro forma* and third-party or "real" assignments.¹⁴

B. The Managing Director's Decision

The Managing Director denied Lockheed Martin's Waiver Request in all respects. He stated that Congress empowered the Commission "to waive or defer payment of an application fee in any specific instance for good cause shown, where such action would promote the public interest."¹⁵ The Director found that Lockheed Martin had not established good cause for a waiver and reduction of fees. The decision notes that the amount of a fee represents the FCC estimate concerning the *average* cost to the Commission of providing the service, and that, as an average, there will be individual cases in which the actual cost may be more or less. The decision states that "[i]t is not our intention to make individualized determinations of the 'appropriate fee.'" Other than referencing general FCC fee policies, the Managing Director did not address the wide disparity between filing fees for the assignment of GSO versus NGSO satellite systems; nor did he address the fact that a \$57,510 filing fee for a *pro forma* assignment application is excessive and has no reasonable relationship to the costs incurred or services provided by the Commission in connection with such an application.

¹⁴ *Id.* at 2 n. 4.

¹⁵ Managing Director's Decision at 1, citing 47 USC §158(d)(2).

With respect to Lockheed Martin's alternative request to calculate the fee based on the number of *orbit locations* instead of the number of *satellites*, the Director found that the *Ka-Band Fee Decision* was not "precedent" on which Lockheed Martin could rely. He further held that the policy of assessing GSO fees on a *per orbit location* basis "is not applicable to the present application."¹⁶

II. Questions On Review

This Application for Review presents the following issues:

- A. Whether the Managing Director should have reduced the applicable filing fee for assignment of the Astrolink System authorization to conform to the filing fee for assignment of an NGSO satellite system?
- B. Whether the Managing Director should have based the applicable filing fee for assignment of the Astrolink System authorization on the number of orbital locations the Astrolink System will occupy rather than the number of satellites in the system?
- C. Whether the Managing Director ignored important public interest considerations supporting this request for a partial waiver and refund of fees?
- D. Whether special consideration should be given to fee waivers in the context of *pro forma* assignments.

III. Argument

A. The Commission Should Reduce the Applicable Fee to the Amount Charged for Assignment of an NGSO System License

Lockheed Martin respectfully submits that the Managing Director erred in refusing to conform the Astrolink filing fee to the fee charged for assignment of an NGSO system license. Specifically, the Director failed to address why an assignment of license for a GSO satellite system of technically identical satellites commands a fee that is dramatically higher -- in this

¹⁶ Managing Director's Decision at 2.

case, by a factor of nearly seven-fold -- than the fee for assignment of an NGSO satellite system. The Director's decision also failed to address significant public interest factors cited by Lockheed Martin supporting a waiver and fee adjustment in this case.

As an initial matter, the Commission, Congress and the courts all have noted that FCC filing fees should be compensatory, *i.e.*, they should bear a reasonable relationship to the expenses the Commission may be expected to incur in processing the application. Thus, the Commission has stated that "[application fee] charges are based primarily on the Commission's cost of providing these regulatory services."¹⁷ The U.S. Court of Appeals also has stressed that "A 'fee' is a payment for a special privilege or service rendered, and not a revenue measure."¹⁸ Indeed, the Commission has noted that "[w]e have worked with Congress to ensure that, to the best extent possible, fees reflect only the direct cost of processing the typical application or filing."¹⁹ Lockheed Martin believes that a \$57,510 filing fee for assignment of the Astrolink license and, more particularly, the Managing Director's disallowance of a partial waiver and refund in this case, contravene these fundamental principles.²⁰

¹⁷ In the Matter of Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, *Report and Order*, 62 RR 2d 303, 305 (1987), *citing* Section 8(a) of the Communications Act of 1934, 47 U.S.C. § 8(a).

¹⁸ *Nat'l Cable Television Ass'n, Inc. v FCC*, 554 F.2d 1094, 1108-09 (D.C. Cir. 1976) ("If a 'fee' unreasonably exceeds the value of the specific services for which it is charged it will be held unlawful.").

¹⁹ Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989, *Memorandum Opinion and Order*, 5 FCC Rcd 3558, 3574 (1990).

²⁰ Lockheed Martin certainly acknowledges that, in general, FCC filing fees reflect the Commission's estimate as to the *average* cost to the Commission of providing the service and, as such, that the actual cost in any given case may be more or less. However, waiver was sought in this case because the fee in question far exceeds any conceivable costs the Commission might incur to process the application.

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First, the wide disparity between the fee for assignment of an NGSO system authorization, a flat fee of only \$8,810, and the fee charged for assignment of the Astrolink GSO system authorization, a significantly higher fee of \$57,510, highlights that the fee schedule as applied in this case does not adhere to the principle that FCC filing fees should be compensatory and related to the services provided. Indeed, FCC processes and services afforded GSO assignment applications and those afforded NGSO assignment applications are identical; yet the disparity in filing fees would suggest that a GSO system assignment requires or receives heightened FCC attention or resources. Lockheed Martin is not aware of any factor or analysis to support such a view, and the Managing Director's Decision affords no explanation or basis for this wide disparity between NGSO and GSO assignment of license fees.

The Commission has explained why its fee structure distinguishes between NGSO and GSO satellite networks in the context of *initial applications to launch and operate* these two types of systems. For example, international coordination burdens associated with initial applications are different for the two architectures:

***NGSO satellite systems are coordinated internationally with all other users of the same frequency bands. A single package of information is prepared for each stage of the ITU registration process: advance publication, coordination, and notification, as appropriate. Only one group of affected administrations is involved in the correspondence associated with the coordination of the entire system. The staff estimates that the coordination processing of an NGSO application requires about three times the resources as the processing of an individual geostationary satellite location application. Therefore, the NGSO application fee is approximately three times that of a single satellite application.²¹

²¹ Letter of the Managing Director to John P. Janka, counsel for Hughes Communications Galaxy, Inc., August 26, 1997 ("1997 Hughes Ruling"). In that case the Director denied Hughes' request for use of a "system" fee -- similar to the system fee applicable to NGSO systems -- in
continued...

While different FCC resources may be required to process applications for authority to launch and operate NGSO versus GSO satellite systems, no such differences arise in the context of assignment of license applications. Indeed, each NGSO and GSO system holds a single satellite system authorization regardless of the number of space stations in the system; and each NGSO and GSO licensee seeks FCC assignment authority using the same basic FCC application form. Except for *pro forma* assignments, each application to assign an NGSO or GSO authorization is placed on public notice to afford interested parties the right to comment on the application.²² Although there are technical differences in the two types of systems, as noted above, technical issues typically do not arise in connection with assignment of license applications like they do in the context of applications for new systems. Assignment applications involve different public interest considerations, such as the qualifications of the assignee, the competitive consequences of the proposed transaction, and other issues which are precisely the same for GSO and NGSO systems alike. Thus, as noted in the Waiver Request, it is impossible to reconcile identical FCC services relating to the assignment of GSO and NGSO system authorizations with the vastly different application fees charged in each case.

Second, the Managing Director disregarded important public interest factors identified by Lockheed Martin in support of a waiver and fee refund in this case. For example, the Waiver

...continued

connection with Hughes' GSO Expressway satellite system. However, the Director did authorize a fee payment based upon the number of orbital locations Hughes proposed to occupy rather than the number of satellites it proposed to launch and operate.

²² As noted in the Waiver Request, the assignment of the Astrolink System license in this case involved a *pro forma* assignment from Lockheed Martin to a wholly-owned subsidiary of Lockheed Martin, a factor which renders even more pronounced the inequity of a \$57,510 filing fee for this Astrolink System application. See discussion, *infra*, at pages 11-12.

Request asked the Director to avoid discriminatory treatment, noting that “[t]he Telecommunications Act of 1996 seeks to prevent arbitrary discrimination among providers of similar telecommunications services”.²³ Lockheed Martin also maintained that conforming GSO and NGSO assignment of license fees was necessary “to treat GSO and NGSO system operators equitably, and to preserve and promote competition among all providers of satellite communications services.”²⁴

These are important public interest considerations and not just theoretical concerns. As the Commission is aware, GSO and NGSO satellite systems using Ka-band frequencies will compete head-to-head in the broadband telecommunications market. For example, Teledesic, the sole NGSO Ka-band system currently licensed by the Commission, is widely expected to compete on a global scale with GSO Ka-band systems like Astrolink.²⁵ Penalizing GSO system operators by imposing significantly higher assignment of license fees while NGSO competitors pay only relatively minor fees for identical FCC services is inequitable and unfair. Indeed, requiring Lockheed Martin to pay a \$57,510 fee for assignment of the Astrolink license, while assessing Teledesic an \$8,810 fee in connection with its recent transfer of control application, does not reflect even-handed regulatory treatment accorded to providers of similar

²³ Waiver Request at 3, citing H.R. Rep. No. 103-213, 103d Cong., 1st Sess. 494 (1993) (Conference Report); H.R. Rep. No. 103-111, 103d Cong., 1st Sess. 259-60 (House Report); Implementation of Section 3(n) and 332 of the Communications Act, GEN Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 1411, 1418 (1994) (Similar commercial mobile radio services must be accorded similar regulatory treatment); Implementation of Sections 3(n) and 332 of the Communications Act, GEN Docket 93-252, *Third Report and Order*, 9 FCC Rcd 7988, 7996 (1994) (mobile services must be treated similarly if they compete against each other).

²⁴ Waiver Request at 3-4.

²⁵ See generally Merrill Lynch, *Global Satellite Marketplace 99*, April 14, 1999, at 99; Robert B. Kaimowitz, David B. Kestenbaum and Michael K. French, *The Satellite Communications Industry*, March 2000, at 24 *et seq.*

telecommunications services.²⁶ Granting a waiver and partial refund in this case, as requested by Lockheed Martin, would promote the public interest by addressing these inequalities, by fostering competition, and by creating a level playing field among providers of similar communications services.

Finally, the Waiver Request stressed that the \$57,510 filing fee in question relates to a *pro forma* assignment of the Astrolink authorization from Lockheed Martin to a wholly-owned subsidiary of Lockheed Martin. It is legitimate to argue that a *pro forma* assignment application involves significantly lower processing costs than a third-party or “real” assignment application.²⁷ Indeed, *pro forma* applications are not required to be placed on public notice; petitions or other comments are not entertained; and the qualifications of the assignee typically are not in issue because the party in ultimate control of the license has already been approved by the FCC. Lockheed Martin also observed that the FCC’s fee schedule does distinguish between *pro forma* and “real” assignment applications in the case of other services, thereby acknowledging, at least for those services, that the processing of *pro forma* assignments involves reduced cost.²⁸

In this case, a \$57,510 filing fee for the *pro forma* assignment of a GSO system of technically identical satellites bears no reasonable nexus to the costs associated with processing such a *pro forma* assignment, especially since Lockheed Martin’s qualifications already were

²⁶ See Application for Transfer of Control of Teledesic, LLC from Teledesic Corporation to ICO-Teledesic Global Limited, filed on May 31, 2000. Although the Teledesic application involved a transfer of control rather than an assignment of license, for FCC fee purposes transfers and assignments are treated the same.

²⁷ See Waiver Request at 2-3.

²⁸ The Waiver Request noted that in the mass media context, for example, Section 1.1104 of the Commission’s rules requires a fee of \$105.00 per station for a *pro forma* assignment of license application, but a fee of \$725 per station for a third-party assignment of license application --a difference of nearly seven-fold. See 47 C.F.R. §1.1104(1)(f).

known to the Commission. There also is no apparent reason why a *pro forma* assignment application for a system of technically identical GSO satellites requires a filing fee of \$6,390 *per satellite* -- which, in Lockheed Martin's case, required a total fee of \$57,510 -- while the same *pro forma* assignment application for a system of technically identical NGSO satellites requires a substantially lower fee of only \$8,810 per system. To put the matter in concrete terms, following Lockheed Martin's payment of a \$57,510 fee for a *pro forma* assignment of the Astrolink System, Teledesic recently paid a substantially lower \$8,810 fee for a *third-party assignment involving a substantial ownership change*. This inequality should be addressed through the waiver process, as requested by Lockheed Martin, and the Managing Director's Decision should therefore be reversed.

For these reasons, Lockheed Martin urges the Commission to assess a fee in this case of no more than \$8,810 -- the same fee assessed for NGSO satellite licensees -- and to refund the difference of \$48,700.

**B. At a Minimum, the Commission
Should Calculate the Applicable GSO
Filing Fee Based on the Number
of Orbital Locations in the
Astrolink System Rather Than
the Number of Satellites**

The Waiver Request sought alternative relief in the event the Commission declined to reduce the Astrolink filing fee to conform to the NGSO fee of \$8,810. Specifically, Lockheed Martin requested that the fee be based on the number of orbital locations that the Astrolink System will occupy rather than the number of satellites in the system. As noted above, the Astrolink System is comprised of nine GSO satellites that will occupy a total of five orbital locations. Calculating the fee on a *per orbit location* basis, as requested by Lockheed Martin, would yield a fee of \$31,950 (*i.e.*, five orbital locations times the \$6,390 fee per location),

whereas deriving the fee on a *per satellite* basis yielded a fee of \$57,510 (*i.e.*, nine satellites times the \$6,390 fee per satellite). A refund based on a *per orbit location* method of calculating the fee would be \$25,560 (*i.e.*, the \$57,510 fee paid less a \$31,950 fee required).

In support of this request, Lockheed Martin cited FCC precedent for treating GSO space station fees in this manner. Specifically, the Waiver Request quoted from and appended the Managing Director's *Ka-Band Fee Decision*, which was used in September 1995 to calculate fees in the first Ka-band satellite processing round.²⁹ In that case the Director authorized fee payments based on the number of orbital locations a GSO satellite system would occupy rather than on the total number of satellites in the system.³⁰ Although this was an interim decision, the Director stated that the Commission would review the fee schedule as it applied to GSO space stations "because of the evolution in geostationary satellite technology and the multiple geostationary space stations that Ka-band applicants are anticipated to deploy in their systems."³¹ In view of this decision, Lockheed Martin was permitted to recalculate (on a *per orbit location* basis) the filing fee it had paid (on a *per satellite basis*) upon filing its application for authority to launch and operate the Astrolink System.³²

²⁹ See Waiver Request at 4 and Appendix 4.

³⁰ See *Ka-Band Fee Decision* at ¶ 2.

³¹ See *Ka-Band Fee Decision* at ¶ 1. Lockheed Martin has not found any reported cases or otherwise been able to determine what additional actions, if any, were taken by the Commission as a result of such review. However, as noted below, the *per orbit location* method of calculating GSO satellite fees has been used by the Commission in other cases.

³² The *Ka-Band Fee Decision* was based, in turn, on a contemporaneous FCC ruling that Hughes Communications Galaxy, Inc. would be permitted to submit an application fee in the first Ka-band processing round on a *per orbit location* basis regardless of the number of satellites in the Hughes System. Letter of Andrew S. Fishel, Managing Director, to John Janka, counsel for Hughes, September 28, 1995 ("1995 Hughes Ruling"). As shown in the *1995 Hughes Ruling*, the International Bureau and Managing Director tentatively concluded that the fee schedule for GSO space stations "may not be suitable" for service in the Ka-band. As an interim measure,

continued...

In the present case, the Managing Director denied Lockheed Martin's refund request, stating that the *Ka-Band Fee Decision* is not "precedent" upon which Lockheed Martin may rely. The Director further held that the *Ka-Band Fee Decision* "is not applicable to the present [assignment of license] application."

Lockheed Martin urges the Commission to reverse the Managing Director's decision and grant this alternative relief, for the following reasons.

First, the Managing Director should not have dismissed the Lockheed Martin request on the ground that the *Ka-Band Fee Decision* is not "precedent." Lockheed Martin recognizes that the FCC fee refund requests are resolved on a case-by-case basis, and that one waiver decision may not necessarily bind the Commission, in a legal sense, in another context. However, like all FCC decisions, fee refund cases are predicated on specific facts presented, and are resolved according to principles or policies established by the Commission over time. The Waiver Request pointed to the *Ka-Band Fee Decision* because it established relevant -- indeed compelling -- fee calculation principles which Lockheed Martin believes should be applicable to this case. In particular, the decision adopted a framework for calculating fees for GSO satellite systems by looking to the number of orbital locations that will be occupied rather than to the number of satellites in the system. Whether or not this framework has become "precedent" in the technical sense, it has now become established Commission policy and practice to calculate GSO filing fees in this manner, as shown by the following:

- The Managing Director granted a similar fee waiver for GSO satellite systems in the 2 GHz and 36-51.4 GHz frequency bands. See FCC Public Notice, Filing Fee Waiver Established For Applications Proposing Geosynchronous Space Stations

...continued

therefore, the Managing Director found that relief from filing a "per space station" fee payment was appropriate "in order to avoid unnecessary hardship on the applicants."

in Response to Reports Nos. SPB-88 and SPB-89, Mimeo No. 76181 (released August 26, 1997) ("The waiver permits applicants proposing more than one technically identical space station to be located at a single orbital location to file their fees based upon the number of orbital locations they propose to occupy rather than the number of space stations they propose to launch and operate.").

- The Managing Director also granted a similar fee waiver to Lockheed Martin Corporation in connection with its application to launch and operate the Regional Positioning System in the Radionavigational-Satellite Service. See Letter of Mark Reger, Chief Financial Officer, Office of Managing Director, to counsel for Lockheed Martin, June 22, 2000. ("...your request to waive and reduce the filing fees to the amounts associated with the filing of six satellites ... based on the fact that the twelve technically identical space stations are to be deployed in only six orbital locations, is granted.").

The Managing Director should have applied this established GSO satellite fee framework in evaluating the current Waiver Request.

Second, the Managing Director's conclusion that the *Ka-Band Fee Decision* "is not applicable to the present [assignment of license] application" is unjustified. It is true that the *Ka-Band Fee Decision* and the other waiver cases cited above relate to initial applications for authority to launch and operate GSO satellite systems and not to applications for assignment of GSO system authorizations. However, there is no apparent reason why the *per orbit location* standard should apply to initial GSO satellite applications but not to assignment of license applications. Indeed, the stated rationale for relying on the number of orbital locations in the case of initial applications is that the same FCC resources are required for processing the application regardless of the number of satellites in the system.³³ Identical reasoning applies to an assignment of a GSO system license since no greater FCC resources are required to process an assignment application simply because more than one GSO satellite may be located in a given orbital slot.

³³ See, e.g., 1997 *Hughes Ruling*, *supra*, at 2.

Third, the public interest would be served by granting a fee waiver in this case. As noted in the Waiver Request, the Commission's fee schedule should accommodate "the evolution in geostationary satellite technology and the multiple geostationary space stations that Ka-band applicants are anticipated to deploy in their systems."³⁴ Just as the Commission has recognized that fees for initial applications do not reflect advances in GSO satellite technology, so too assignment of license fees do not reflect the evolution in GSO satellite systems. Moreover, grant of a waiver would reduce the assignment of license fee to a more realistic amount consistent with compensating the Commission for actual services rendered, and thereby avoid the harsh result of calculating the fee on a per satellite basis.³⁵ Finally, calculating fees for assignment applications on a *per orbit location* basis would result in consistent requirements for all GSO system applications. This, in turn, would afford confidence that the Commission's processes are even-handed and fair.

* * * * *

For all of the foregoing reasons, Lockheed Martin respectfully asks the Commission to reverse the decision of the Managing Director and grant the requested partial waiver and refund of fees. The filing fee for the Astrolink assignment of license application should conform to the \$8,810 charge imposed by the fee schedule for assignment of NGSO satellite system authorizations. In the alternative, the applicable filing fee should be calculated based on the

³⁴ Waiver Request at 4 n. 6, quoting from the *Ka-Band Fee Decision* at ¶ 1.

³⁵ In the *1995 Hughes Ruling*, which was cited in Appendix 4 to the Waiver Request, the Commission stated "... we believe that interim relief from the requirement to file a 'per space station' fee payment is appropriate in order to avoid unnecessary hardship on the applicants." *1995 Hughes Ruling* at ¶ 3. It bears repeating that the Astrolink assignment of license application in question relates only to a *pro forma* assignment from Lockheed Martin to a wholly-owned subsidiary of Lockheed Martin, a factor which, for reasons discussed above, makes relief in this case all the more compelling.

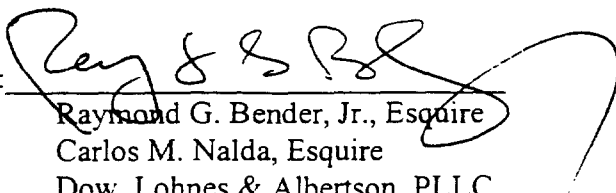
number of orbit locations being assigned and not on the number of GSO satellites in the Astrolink System.

Respectfully submitted,

LOCKHEED MARTIN CORPORATION

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Its Attorneys

December 21, 2000

ATTACHMENT 1

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

OCT 18 2000

OFFICE OF
MANAGING DIRECTOR

Raymond G. Bender, Jr., Esquire
Dow, Lohnes & Albertson, PLLC
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Washington, DC 20036

RE: Request for Partial Waiver and Refund of Fees
In re Lockheed Martin Corporation For Authority for a
Pro Forma Assignment of the Astrolink™ System
Authorization
Fee Control No. 9901088210298001

Dear Mr. Bender:

We reviewed your request dated January 7, 1999 to reduce the application fees for the assignment of nine geostationary (GSO) space station authorizations for Astrolink satellites. You submitted funds of \$57,510 (based on a \$6,390 fee for each of the nine Astrolink satellites) and asked the Commission to reduce the total fee to \$8,810 on the grounds that the amount is "the actual cost of processing a single *pro forma* assignment application and to avoid unwarranted discrimination between geostationary satellite and non-geostationary ('NGSO') operators in the authorization assignment context." We are denying your request for partial waiver of the application fees and the concomitant refund of \$48,700.

You base the request for a downward fee adjustment on alternative grounds, e.g., the assignment is *pro forma* requiring only minimal effort, especially in view of the Commission's previous consideration of Lockheed's qualifications; GSO fees are disproportionately larger than NGSO; and that the fee should be calculated on a *per orbit location* basis rather than on a *per satellite* basis. On this latter ground, you theorize that processing an application with two satellites at the same orbit is no more costly than processing a single satellite at such orbit. We note that you did not demonstrate in any event how a partial waiver and reduction of the fee would promote the public interest.

Congress empowered the Commission to "waive or defer payment of an application fee in any specific instance for good cause shown, where such action would promote the public interest." 47 USC §158(d)(2). *See also* 47 CFR §1.1117(a). A petitioner seeking a waiver bears the burden of establishing "good cause shown" and that the waiver "would override the public interest, as determined by Congress, that the government should be reimbursed for the specific regulatory action of the FCC." *Establishment of a Fee Collection Program to Implement the*

Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Report and Order, 2 FCC Rcd 947, 961 (1987).

Applying this standard to your request, we find that reasons you advance do not establish good cause to waive the fees. Concerning the basis for the fees, we are well aware of our analysis. As you noted, "[t]he Schedule of Charges results from a determination by the Congress that the fees represent a fair approximation as to how the Commission's cost should be distributed. Members of the affected telecommunications industries have had an opportunity to comment upon and suggest changes to the Schedule of Charges through the legislative process. [Conference Report at 433.] We have worked with Congress to ensure that, to the best extent possible, fees reflect only the direct cost of processing the typical application or filing."

Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989, Memorandum Opinion and Order, 5 FCC Rcd 3558, 3574 (1990), at paragraph 36. Our comment in this regard is in the context of our discussion of the fee process. We stated, "it is important for the public to understand that the amount of the fee represents the Commission's estimate, accepted by Congress, on the *average* cost to the Commission of providing the service. Conference Report at 423. As an average, there will be individual situations in which the actual cost may be more or less. It is not our intention to make individualized determinations of the 'appropriate fee.' Rather, except in unusual cases in which the public interest requires otherwise, we will levy the fee as determined by Congress."

Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Opinion and Order, 3 FCC Rcd 5987 (1988). It is well settled that the standard for the fees has never been based on the actual cost of the work involved in any single application. Your current request does not alter that analysis nor change the result.

We note that the Public Notice (PN) 56031, *Interim Filing Fee Payment Established for Ka-Band Satellite Applications* (Sep 28, 1995), with the established cut-off date of September 29, 1995, is not applicable to the present application. Moreover, it is not precedent upon which the Commission should "automatically reimburse Lockheed Martin \$25,560, the portion of the fee associated with four Astrolink satellites . . . collocated with other[s]." In that regard, our determination on a request for waiver is on a case by case basis and our decision in any one case is not precedence for subsequent requests. 47 U.S.C. § 158(d)(2); 47 C.F.R. § 1.1117(a).

Reviewing the entirety of your request, we find that it did not address how the partial waiver would promote the public interest. The absence of that element is an additional reason to deny your request.